

Before The  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In the Matter of	)	
	)	IB Docket No. 03-38
Bayan Telecommunications Company	)	
Digital Telecommunications Philippines, Inc.	)	
Globe Telecom, Inc.	)	
Philippine Long Distance Telephone Company	)	
Smart Communications, Inc.	)	
Subic Telecom	)	
	)	
AT&T Emergency Petition for Settlements	)	
Stop Payment Order and Request for	)	
Immediate Interim Relief	)	

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**COM M E N T**

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Digital Telecommunications Phils., Inc. (DIGITEL) is respectfully submitting its Comment and is opposing AT&T's Emergency Petition for Settlements Stop Payment Order & Request for Immediate Relief based on the following grounds, to wit:

**AT&T DID NOT COME TO THE HONORABLE COMMISSION WITH CLEAN HANDS.**

It is a well-settled principle, not only in courts of law but also in courts of equity, that one who comes to court must come with clean hands. AT&T is petitioning the Honorable Commission for protection from whipsawing on the US-Philippine route. But, as will be hereinafter discussed, **AT&T did not come with clean hands.**

All through these years, it has been AT&T which whipsawed Philippine carriers whenever it unilaterally decides to lower the termination rates.

For instance, AT&T and DIGITEL had a valid and existing contract from 31 March 1999 to 31 March 2000. And, this agreement provided that AT&T was to pay DIGITEL a settlement rate of US\$ 0.285 a minute. When it served notice to DIGITEL sometime in August 1999 that it wanted to lower said settlement rate to US\$ 0.15 a minute and DIGITEL did not acquiesce, AT&T did not send any US-Philippine traffic for six (6) months, or from September 1999 to March 2000, which was when DIGITEL finally acceded to AT&T's unilateral decision. **Thus, for a period of six (6) months, there was no traffic on the U.S.-Philippine route** *(please refer to Annex "A")*.

What AT&T had done during this period is effectively analogous to having blocked the U.S.-Philippine route of DIGITEL since there was absolutely zero traffic. And, during this six-month period, AT&T simply terminated traffic to DIGITEL's Network by rerouting the calls to another Philippine carrier.

AT&T's whipsawing against DIGITEL did not stop there. For, not content with getting away with whipsawing the first time around, AT&T again whipsawed DIGITEL sometime between March 2002 and June 2002 when it unilaterally decreased the volume of traffic between the U.S.-Philippine route of DIGITEL by more than 50%, or from 5,276,511 minutes in March 2002 to 2,256,907 minutes in June 2002 (*please refer to Annex "B"*). It was only when DIGITEL finally agreed to its demand that the normal volume of traffic resumed.

Consequently, with its penchant for whipsawing, the Honorable Commission should not and must not entertain AT&T's petition. On the contrary, the Honorable Commission must serve notice to all American carriers that it does not countenance whipsawing. This, whether it benefits or discriminates against American carriers. Otherwise, international carriers will sense that the Honorable Commission wields a double standard – one for American carriers and another that applies for International carriers. It would be ironic if the Honorable Commission does that because everybody always presumed that justice and fairness will be dispensed in issues brought before it.

Being the foremost expert in whipsawing, it did come as a surprise to many Philippine carriers that AT&T would now have the nerve and temerity to seek the help of the Honorable Commission in resolving its present dispute with Philippine carriers. While other U.S. carriers honored the bilateral nature of interconnection contracts by painstakingly taking time to negotiate and arrive at a mutually acceptable agreement with DIGITEL, AT&T still refuses and does not espouse bilateral negotiations in resolving commercial disputes, which is against ITU regulations.

In its letter dated 29 January 2003, AT&T informed DIGITEL that it is committed to adhere to ITU regulations that "expressly provides that

settlement rates are to be subject to 'mutual agreement' of the corresponding parties." But, it never submitted a negotiable counter-offer to DIGITEL. On the contrary, **what is clear and transparent from the action taken by AT&T is that until now, it still wants to unilaterally impose its will upon small Philippine carriers.**

To reiterate, AT&T practiced whipsawing whenever it felt it was time to lower termination rates in the Philippines. No Philippine carrier ever complained. Now that some Philippine carriers, including DIGITEL, felt the extreme need to increase their termination rates with foreign carriers, and not just U.S. carriers, **which rate is still way below the Honorable Commission's ceiling of US\$0.19 for countries like the Philippines,** AT&T is complaining. The Honorable Commission must not and should not tolerate AT&T's whipsawing of foreign carriers in the past by entertaining the above-captioned petition.

AT&T is simply content in invoking the regulatory power of the Honorable Commission to maintain the status quo in termination rates by temporarily putting to a stop the implementation of agreements already reached by some U.S. carriers with Philippine carriers like DIGITEL which increased the termination rate.

It is ironic that an industry giant like AT&T would resort to abusing the processes of the Honorable Commission instead of simply sitting down with individual Philippine carriers to arrive at a mutually agreed termination rate. Simply put, and with all due respect to the Honorable Commission, it would seem that AT&T would rather that the Honorable Commission do the negotiation with Philippine carriers for it!

AT&T never showed any willingness, if at all, to negotiate with DIGITEL. After all, AT&T never submitted any negotiable counter-proposal to DIGITEL prior to its letter of 29 January 2003 which unilaterally rejected

DIGITEL's notice of increase. As a matter of fact, AT&T never went back to DIGITEL after receiving the former's notice of increase of termination rates. AT&T never submitted a negotiable counter-offer then.

Perhaps with an intent of showing to the Honorable Commission that it is actually negotiating in good faith with DIGITEL, AT&T finally submitted a negotiable counter-proposal. But, this happened only after AT&T instituted the above-captioned petition.

### **DIGITEL DID NOT BLOCK AT&T CIRCUITS**

In Paragraph 13 of his Declaration, Mark Miller, AT&T's Regional Director for Asia/Pacific Route Management, alleged that DIGITEL was blocking AT&T's circuit, particularly about a third of the traffic that AT&T usually sends to DIGITEL. This is a gross misrepresentation of the facts and a blatant attempt to foist a falsehood before the Honorable Commission.

In its letter dated 7 February 2003, AT&T had asked DIGITEL to unblock AT&T circuits immediately. DIGITEL replied in its letter dated 11 February 2003 that "if AT&T only took time to verify its call data records, then **AT&T would have discovered that DIGITEL have not and did not block calls originating from AT&T circuits.** The volume of traffic from AT&T to DIGITEL from 1 to 9 February 2003 belies any claim of a blockage as 1,603,191.9 minutes were monitored coming in," which is just about the normal average of 150,000 minutes a day for traffic from the U.S.-Philippine route of AT&T and DIGITEL prior to 1 February 2003, the day Philippine carriers allegedly block AT&T (*please refer to Annex "C"*).

What is intriguing is that after DIGITEL transmitted its letter of 11 February 2002 to AT&T, the volume of traffic monitored the following day showed a dramatic decline (*id.*). Which of course begs the question as to

whether or not the decline was part of AT&T's malicious intent to show to the Honorable Commission that DIGITEL did in fact block AT&T circuits. And, as a consequence of such alleged blocking, DIGITEL can be made a party-respondent in the instant petition.

Indeed, Mark Miller swore under oath, particularly under paragraph 13 of his Declaration which was submitted to the Honorable Commission, that "x x x Subic, Digitel, Bayantel and Smart are also now blocking AT&T circuits." He further stated in the same paragraph that "x x x Digitel is blocking about a third of the traffic sent by AT&T."

But, nothing is further from the truth. After all, DIGITEL never blocked AT&T's circuit. On the contrary, it simply sent notice to AT&T that it was terminating its International Telecommunications Service Agreement with AT&T effective six (6) months from receipt of such notice, which is compliance with the terms and conditions of the interconnection agreement. Other than the service of the notice of termination, DIGITEL did not undertake any other action.

Moreover, as Regional Director for Asia/Pacific Route Management, Mark Miller had actual personal knowledge that the volume of traffic between AT&T and DIGITEL on the U.S.-Philippine route was within the average historical data.

Besides, the historical data is that, since year 2002, 95% of international traffic that AT&T terminates to DIGITEL's network are on-net traffic (*please refer to Annex "B"*). If off-net traffic was indeed rerouted to DIGITEL, then the rerouted traffic should only constitute less than 5% of the total traffic, not a third or 33% as misrepresented by Mr. Miller and AT&T. After all, Philippine carriers could not just accept off-net calls. Otherwise, it will be incurring losses instead of additional revenues.

Clearly, there was no disruption of service that would necessitate interim relief from the Honorable Commission insofar as calls terminating to DIGITEL's network is concerned, which is again another misrepresentation of Mr. Miller and AT&T. The existing historical data readily support this fact.

What is evident now is that AT&T simply included DIGITEL in the above-captioned petition because it is trying to justify its complaint against several Philippine carriers for whipsawing.

### **PHILIPPINE CARRIERS ARE JUSTIFIED IN SEEKING AN INCREASE IN TERMINATION RATES**

In its Petition, AT&T alleged that the rate increase being sought by Philippine carriers is unjustified because there was no showing of an increase in termination costs. Instead, AT&T averred that the increase was being undertaken to "align" fixed and mobile rates (*please see Petition, p. 2*). Meanwhile, in his Declaration, Mark Miller averred that U.S. carriers made the third largest U.S. settlements outpayment – US\$ 190 million – to Philippine carriers as per figures released under FCC Section 43.61 Data for Year 2001 (*please see Declaration, paragraph 3*). These statements are only partially correct and do not give the complete picture.

This is because AT&T conveniently omitted to state that, in the same report, while U.S. carriers made settlement outpayments of US\$ 195 million to Philippine carriers, **U.S. carriers also retained US\$ 301 million in net revenue** (*please see FCC Section 43.61, 2001 International Traffic Report, page 10*). **What is more glaring is that AT&T got US\$ 186.6 million in net revenue while making settlement outpayments of only US\$52.4 million** (*id., page 47*). In other words, while **AT&T got 60% of the total net revenue of U.S. carriers, it only made settlement outpayments equivalent to 24% of the total outpayments of U.S. carriers!**

Philippine carriers are seeking an increase in termination rates because the cost to operate has also increased in the light of the devaluation of the peso. For, at the time supply contracts were entered into with equipment manufacturers, **the prevailing exchange rate was only PhP26 to US\$1.** But, with the Asian Financial Crisis of 1997, the exchange rate ballooned. **Today, it stands at PhP54 is to US\$1!**

Thus, while debt payments doubled, the Philippine regulator did not allow Philippine carriers to just increase the rates subscribers are charged. What is worse, the decline in termination rates – which were **unilaterally imposed by AT&T since 1999** in the case of DIGITEL – placed tremendous pressure on Philippine carriers to service debts to equipment suppliers. And, **the sought increase of fixed line carriers like DIGITEL to US\$ 0.12 cents is still below the ceiling of US\$ 0.19 set by the Honorable Commission** for the classification of countries which includes the Philippines.

The Honorable Commission may take judicial knowledge that fixed line carriers the world over are experiencing financial difficulties due to reduced international revenues. Philippine fixed line carriers like DIGITEL saw the need to look for alternative sources of revenue just to survive. Thus it was that they sought an increase in termination rates, which was not only made with U.S. carriers but with all foreign administrations.

Inasmuch as the **termination rates for the Philippines**, which was **unilaterally set by AT&T, are still way below the ceiling set by the Honorable Commission** and that said rates are the only dollar denominated income to be received by Philippine carriers that would compensate for the more than 100% depreciation of the peso since 1997, it was just but logical that Philippine carriers like DIGITEL to consider an increase in termination rates with all foreign administrations, including U.S. carriers, as means to keep its head afloat. Incidentally, **it should be noted that majority of**



**foreign administrations, including many U.S. carriers, already agreed to the new termination rates.** This would not have been the case if the increase was indeed unreasonable and unjustifiable as what AT&T is trying to portray before the Honorable Commission.

Moreover, it should be pointed out that Philippine carriers are not in a position to whipsaw U.S. carriers, especially AT&T. The Philippine Telecommunications Industry is heavily deregulated. That is why there are at least nine (9) international gateway facility (IGF) operators, seven (7) CMTS operators and more than a hundred fixed line operators.

Rather, **AT&T has been whipsawing Philippine carriers since the late 1990s to coerce Philippine carriers like DIGITEL to agree to its several unilaterally imposed decrease in termination rates.**

Incidentally, **DIGITEL is not included in the List of Telecommunications Carriers that are Presumed to Possess Market Power in Foreign Telecommunications Markets.** Hence, DIGITEL is perplexed why it was ever included as a party-respondent in the above-captioned petition because it is not yet a market power in the Philippines.

### **U.S. CARRIERS SHOULD NOT BE PROHIBITED FROM TENDERING PAYMENTS UNDER THE NEW TERMINATION RATES**

As was heretofore shown, DIGITEL did not block AT&T circuits terminating to DIGITEL's Network. Consequently, there is no legal impediment for DIGITEL to immediately seek payment from U.S. carriers who agreed to pay the new termination rates with DIGITEL.

This is because the instant petition seeks to prohibit U.S. carriers from making payments to Philippine carriers unless and until all AT&T circuits that

were previously blocked are reopened. DIGITEL never made any blocking of AT&T's circuits. Thus, AT&T has no cause of action against DIGITEL whatsoever. AT&T's complaint against DIGITEL should thus be dismissed outright and DIGITEL should be allowed to collect from U.S. carriers who agreed to pay the new termination rates to it.

As final proof of AT&T's bad faith and double standard practices, we are submitting to the Honorable Commission a copy of the AT&T Schedule Rate Change Notification which was attached to AT&T's letter dated 12 February 2003 but which rate change was retroactively effective 1 February 2003 and it reads as follows:

"In accordance with the terms and conditions of Concert Global Services Agreement and Select Attachment with Digital Telecommunications Phils., Inc., **AT&T is now amending its prior price schedules and is now offering the following rates to the countries specified below.** It is expressly acknowledged by the parties that although this Rate Change Notification is with AT&T, AT&T is, until the closing of the agreement between British Telecommunications plc ("BT") and AT&T to terminate Concert as a joint venture between AT&T and BT, acting as agent of a Concert subsidiary, CGN-A LLC, which shall be entitled to all the rights and benefits of this Rate Change Notification as if it were a Service under the Global Services Agreement between Concert and Purchaser. Please acknowledge within 7 days your acceptance of this Rate Change Notification with signature below by an authorized representative. **Please note that pursuant to the Select Attachment, if your company does not acknowledge acceptance of the rate change with a signature and your company continues to send traffic, your company will be deemed to have accepted the rate change"** (*emphasis supplied*).

It may interest the Honorable Commission that in the column for Country, specifically, the Philippines, **the fixed line termination rate AT&T is quoting is US\$ 0.12** while **the mobile line termination rate is US\$ 0.16**, which are the very same rates that AT&T is now opposing and contesting before this Honorable Commission.

**CONCLUSION**

DIGITEL vehemently opposes the petition filed by AT&T. After all, AT&T has no cause of action against DIGITEL as the latter never blocked any AT&T circuit terminating to its network; neither was there any disruption of service that was suffered by AT&T.

Moreover, AT&T must and should be meted sanctions for making misrepresentations before the Honorable Commission in order to justify its petition as against DIGITEL, which suffered a besmirched reputation. The Declaration of Mark Miller was made under oath. And, he had attested therein that his statements were true and correct.

Respectfully submitted.

DIGITAL TELECOMMUNICATIONS PHILS., INC.

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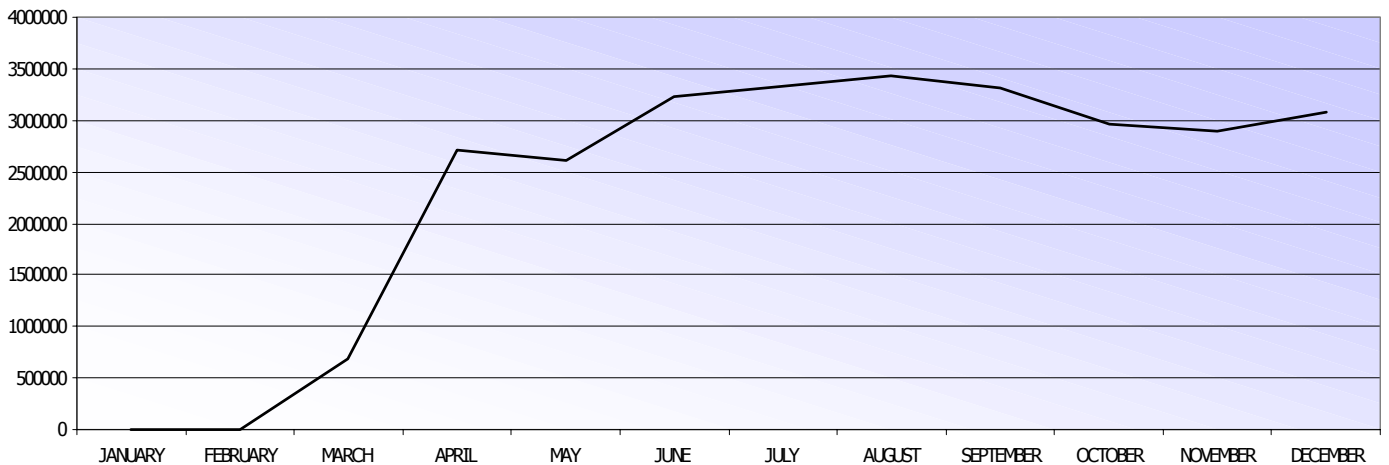
110 E. Rodriguez, Jr. Avenue  
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**ANNEX A****AT&T's Inbound Traffic Summary to DIGTEL for 1999**

AT&T	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEPT	OCT	NOV	DEC	TOTAL
1999	463,126	370,912	521,583	423,862	420,348	460,549	365,579	348,189	9,642	9	0	0	3,201,671

**1999 Inbound Traffic from AT&T****AT&T's Inbound Traffic Summary too DIGTEL for 2000**

AT&T	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEPT	OCT	NOV	DEC	TOTAL
2000	0	0	686,520	2,711,325	2,605,906	3,233,141	3,326,305	3,422,969	3,315,951	2,954,888	2,901,248	3,077,648	28,235,901

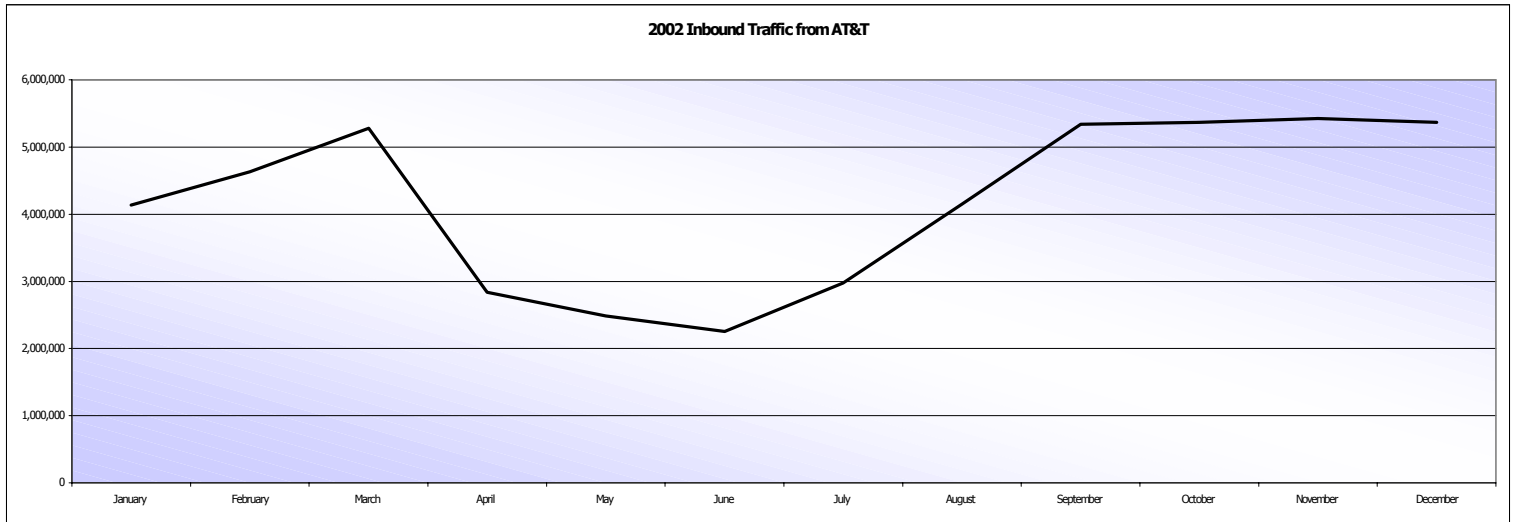
**2000 Inbound Traffic from AT&T**

**ANNEX B****2002 Inbound International from AT&T**

2002	January		February		March		April		May		June	
	On-Net	Off-Net	On-Net	Off-Net	On-Net	Off-Net	On-Net	Off-Net	On-Net	Off-Net	On-Net	Off-Net
	3,971,971	161,623	4,448,011	182,032	5,072,931	203,580	2,711,706	124,249	2,385,639	95,901	2,152,426	104,481
Percentage	96.00%	4.00%	96.00%	4.00%	96.00%	4.00%	96.00%	4.00%	96.00%	4.00%	95.00%	5.00%
TOTAL	4,133,594		4,630,043		5,276,511		2,835,955		2,481,540		2,256,907	

2002	July		August		September		October		November		December	
	On-Net	Off-Net	On-Net	Off-Net	On-Net	Off-Net	On-Net	Off-Net	On-Net	Off-Net	On-Net	Off-Net
	2,779,365	198,672	3,944,724	202,138	5,085,735	251,318	5,099,621	269,792	5,207,157	220,191	5,099,945	262,711
Percentage	93.00%	7.00%	95.00%	5.00%	95.00%	5.00%	95.00%	5.00%	96.00%	4.00%	95.00%	5.00%
TOTAL	2,978,037		4,146,862		5,337,053		5,369,413		5,427,348		5,362,656	

2002	Total	
	On-Net	Off-Net
	47,959,231	2,276,688
Percentage	95.47%	4.53%
TOTAL	50,235,919	



**ANNEX C****February 1 to 17, 2003 Inbound International Traffic from AT&T**

February	Feb. 1	Feb. 2	Feb. 3	Feb. 4	Feb. 5	Feb. 6	Feb. 7	Feb. 8	Feb. 9	Feb. 10	Feb. 11	Feb. 12
2003	253,416	247,835	184,790	145,010	114,031	102,520	149,715	174,922	232,011	196,271	98,607	100,021

February	Feb. 13	Feb. 14	Feb. 15	Feb. 16	Feb. 17
2003	94,411	137,103	113,460	144,959	95,576

